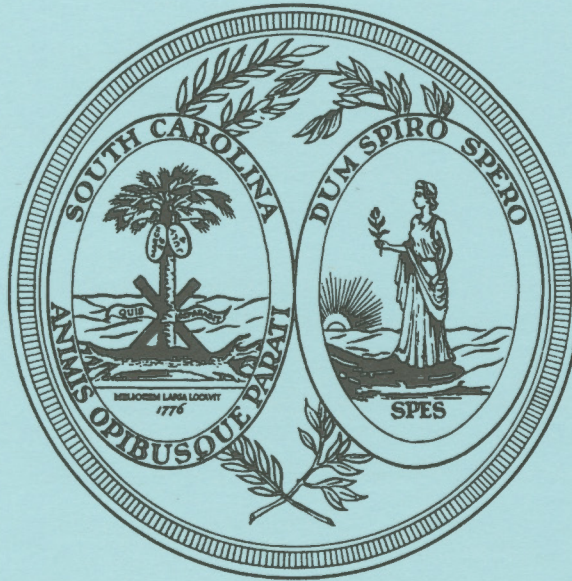


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SOUTH CAROLINA ADMINISTRATIVE LAW JUDGE DIVISION



ANNUAL REPORT 1993-1994

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Administrative Law Judge Division

Marvin F. Kittrell
Chief Administrative Law Judge

Edgar A. Brown Building
1205 Pendleton Street
Columbia, SC 29201
(803) 734-0550

February 1, 1995

TO: The Honorable David M. Beasley
The Honorable Marshall B. Williams
The Honorable David H. Wilkins

RE: Annual Report for Fiscal Year 1993-1994

On behalf of the Administrative Law Judge Division, I am pleased to provide you with this report of the Division's activities for the past fiscal year. Although the first three of our six Administrative Law Judges did not assume office until March 1, 1994, a considerable amount of work was performed during those four months to begin operations. Since then, the Division has moved further along in hiring staff and developing procedures, and that activity will be described in our next Annual Report.

Even during the brief time since the Division's creation, we are already demonstrating our commitment to providing the citizens of this State a neutral forum for the resolution of disputes with state agencies. This is our contribution to the larger objective of government restructuring: to make state government more accountable to the people.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marvin F. Kittrell", written over a horizontal line.

Marvin F. Kittrell

MFK/hls

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Respectfully submitted,

Martin P. Kinn

BIOGRAPHICAL INFORMATION ADMINISTRATIVE LAW JUDGES

INTRODUCTION

The purpose of the Administrative Law Judge Division is to provide a neutral forum for fair, prompt and objective hearings for any person affected by an action, or proposed action of certain agencies of the State of South Carolina.

The Division's principal office is located in the Edgar Brown Building in Columbia.

The mailing address is:

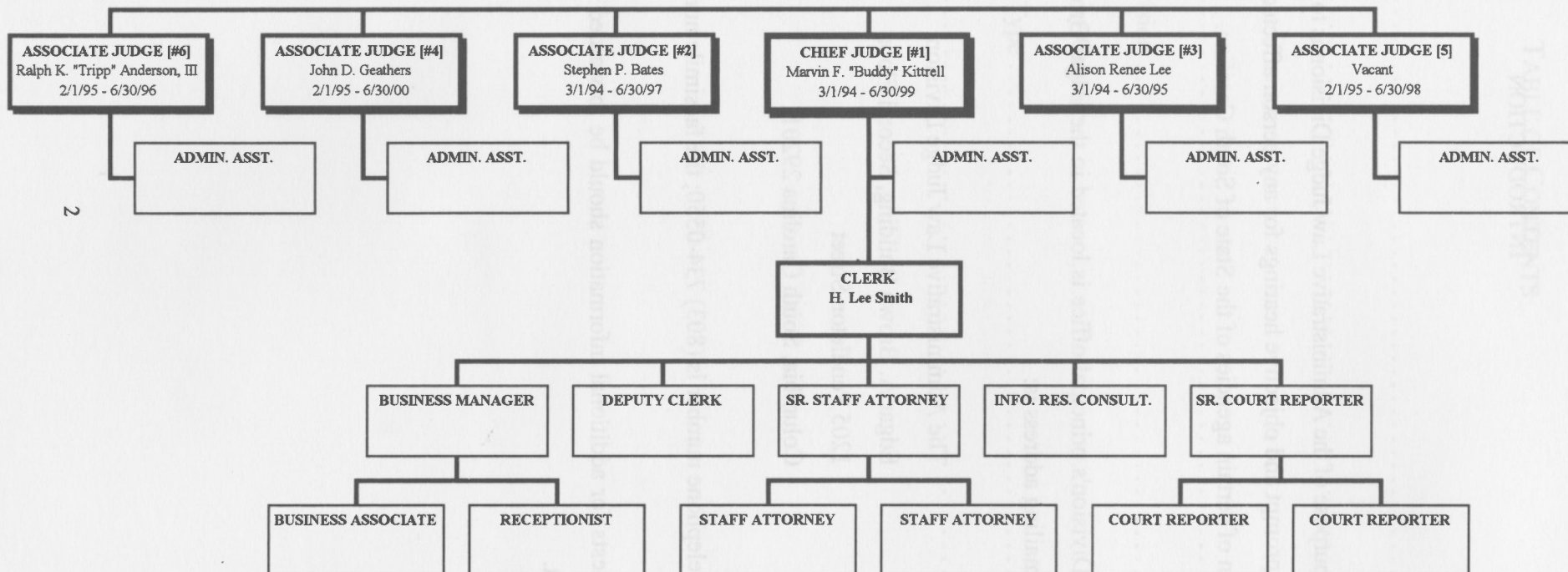
The Administrative Law Judge Division
Edgar A. Brown Building, Second Floor
1205 Pendleton Street
Columbia, South Carolina 29201

The telephone number is (803) 734-0550; the facsimile number is (803) 734-6400.

Requests for additional information should be forwarded to H. Lee Smith, Clerk of Court.

Biographical information for the judges elected in 1994, 1995 and 1996 will be included in the Annual Report for Fiscal Year 1994-95.

ADMINISTRATIVE LAW JUDGE DIVISION



BIOGRAPHICAL INFORMATION FOR ADMINISTRATIVE LAW JUDGES

Marvin F. "Buddy" Kittrell (Seat 1, Chief Judge) b. December 3, 1941 at Daytona Beach, Fla.; s. B.F. and Mamie (Lewis) Kittrell; g. Furman University, B.A. cum laude, 1963; USC, J.D., 1971; Univ. of Fla., LL.M. (Taxation), 1976; m. Kathryn Williams, 2 children, C. Erika and Benjamin Christian; Past Pres., Newberry County Bar Assn.; Past mem. and Pres., Rotary Club of Newberry; mem., Central United Methodist Church; Tau Kappa Epsilon; American Bar Assn., Judicial Admin. Div.; Central Panel, Org. of Chief Administrative Law Judges; Nat'l Judicial Coll., 1993; S.C. Workers' Compensation Comm., 1990-94; Military Service: U.S. Navy, 1965-68, Vietnam (1968) -- Inshore Undersea Warfare Group; elected Chief ALJ seat no. 1 February 23, 1994.

Stephen P. Bates (Seat 2) b. August 11, 1962 at Columbia; s. Roy D and Sarah (Potts) Bates; g. Presbyterian Coll., B.S., 1984; USC, J.D., 1987; single; Blue Key; Sigma Nu; Delta Theta Phi; *Who's Who in American Colleges and Universities*; Richland County Bar Assn.; Columbia Young Lawyers Assn.; Counsel to the Speaker of the S.C. House of Reps., 1988-93; Staff Counsel, Joint Legislative Comm. for Judicial Screening, 1989-91; Staff Counsel, House Legislative Ethics Comm., 1990-93; mem., Eastminster Presbyterian Church; elected to ALJ seat no. 2 February 23, 1994.

Alison Renee Lee (Seat 3) b. September 17, 1958 at Washington, D.C.; d. the late James Joseph and Juanita (Bacote) Lee; g. Vassar Coll., B.A., 1979; Tulane Univ., J.D., 1982; m. Kenzil Franklin Summey; 2 children, Julian Christopher and Amanda Leigh; Admitted to State Bar of Texas, 1982; Louisiana State Bar, 1983, South Carolina Bar 1984; law clerk to the Hon. Israel M. Augustine, Jr., Louisiana Fourth Circuit Court of Appeals, 1982-83; law clerk to the Hon. C. Tolbert Goolsby, Jr., S.C. Court of Appeals, 1983-84; private practice, McNair Law Firm, 1984-89; Staff Counsel, S.C. Legislative Council, 1989-94; Assoc. Comm., Bd. of Comm. on Grievances and Discipline, 1987-89; S.C. Women Lawyers Assn.; Richland County DSS Board, 1984-88; Planning Comm., United Way of the Midlands, 1986-90; St. Peter's Catholic School Board; Pres., Columbia Chap. Links, Inc.; elected to ALJ seat no. 3 February 23, 1994.

Biographical information for the judges elected to Seats 4, 5 and 6 will be included in the Annual Report for Fiscal Year 1994-95.

GENERAL INFORMATION ABOUT THE ADMINISTRATIVE LAW JUDGE DIVISION

The Administrative Law Judge Division is an autonomous quasi-judicial agency within the executive branch of state government. It was created by Act 181 of 1993, widely known as the "Restructuring Act." Although the provisions creating the Division became effective July 1, 1993, the first Administrative Law Judges were not elected until February 23, 1994 with terms beginning March 1, 1994.

The six Administrative Law Judges are elected by a joint session of the General Assembly for a term of office of five years. The initial terms are staggered, with the Chief Judge (Seat 1) and Seats 2 and 3 beginning March 1, 1994, and Seats 4, 5 and 6 beginning February 1, 1995. The initial terms are as follows:

Seat 1: March 1, 1994 through June 30, 1999

Seat 2: March 1, 1994 through June 30, 1997

Seat 3: March 1, 1994 through June 30, 1995

Seat 4: February 1, 1995 through June 30, 2000

Seat 5: February 1, 1995 through June 30, 1998

Seat 6: February 1, 1995 through June 30, 1996

On February 23, 1994, Marvin F. "Buddy" Kittrell was elected to Seat 1 (Chief Judge), Stephen P. Bates was elected to Seat 2, and Alison Renee Lee was elected to Seat 3. *See Biographical Information on page 3 of this report.* On May 25, 1994, John D. Geathers was elected to Seat 4, Karen L. Kaneshaw was elected to Seat 5, and Ralph K. "Tripp" Anderson, III, was elected to Seat 6. (NOTE: Prior to assuming office Ms. Kaneshaw resigned from Seat 5 and the vacancy was scheduled to be filled during the 1995 legislative session.)

Candidates for each seat must be screened by the Joint Legislative Committee for Judicial Screening, and must meet the qualifications required of justices and judges set forth in Article V of the South Carolina Constitution: must be resident of the United States and of South Carolina, be at least 26 years of age, have been licensed to practice law for a minimum of five years, and have been a resident of South Carolina for at least five years preceeding election.

Rules governing practice and procedure before the Division shall be promulgated by the Division subject to review by the General Assembly. Such rules must be consistent with the rules of procedure used in the Courts of Common Pleas, and not otherwise expressed in the Administrative Procedures Act (APA). Pending promulgation of permanent rules and legislative review during 1995, the Division's procedures were governed by the South Carolina Rules of Civil Procedure, supplemented by Temporary Operating Procedures adopted by the Division. *See Rules on page 6 of this report.*

GENERAL INFORMATION (CONTINUED)

The Administrative Law Judge Division's contested case hearings and proceedings are open to the public unless confidentiality is allowed or required by law. A written order is issued for every final decision. Further, under the APA, Administrative Law Judges issue injunctions and enforce subpoenas; also, the Judges have the same power at chambers or in open hearing as do circuit court judges, and the power to issue those remedial writs as are necessary to give effect to the Division's jurisdiction.

The Administrative Law Judge Division has jurisdiction over three types of matters: contested cases, appeals, and regulation hearings.

Contested cases. Administrative Law Judges preside as the initial fact finder in all contested cases involving executive branch departments in which a single hearing officer is authorized or permitted by law or regulation to hear and decide such cases. Exempted are cases arising under the Occupational Safety and Health Act, matters provided for under Title 56 of the South Carolina Code of Laws, and hearings prescribed for or mandated by federal law or regulation. Also falling outside of the Division's jurisdiction are the judicial or quasi-judicial functions of the Workers' Compensation Commission, the Employment Security Commission, the Public Service Commission, and the Human Affairs Commission.

Appeals. Administrative Law Judges hear appeals from final decisions of contested cases before professional and occupational licensing boards or commissions within the Department of Labor, Licensing and Regulation. The Division also has appellate jurisdiction to review certain final decisions of various other boards or departments, such as the Department of Social Services' revocation of a children's day-care facility license, or the Department of Juvenile Justice's revocation of a child welfare agency license.

Regulation Hearings. Administrative Law Judges preside over public hearings held during the promulgation of regulations by a department for which the governing authority is a single director. After the hearing, the Judge shall provide the General Assembly with written findings as to the need and reasonableness of the proposed regulations.

SPECIAL PROJECTS OF THE DIVISION

During the first four months of the Division's existence, the three newly elected judges undertook several projects essential to the establishment of the state's newest agency.

Budget and Personnel.

Funds appropriated for the Division for fiscal year 1993-94 were sufficient to pay the salaries for the three judges, and \$15,000 in operating expenses. A proposed budget for 1994-95 was developed with the assistance of the Office of Internal Operations for the State Budget and Control Board, and submitted to the General Assembly for inclusion in the state appropriations bill. The new budget provided for the six judges, their administrative assistants, and twelve administrative support personnel. The Board's Office of Internal Operations also assisted with the preparation of position descriptions for the Division, and with recruiting and interviewing applicants. By June 30, 1994, two of the judges' administrative assistants and the clerk of court were selected. Most of the remaining positions were to be filled during the first quarter of the 1994-95 year.

Rules.

Within weeks of beginning operations, the Division would receive dozens of pending alcoholic beverage license cases from the Department of Revenue and Taxation. Of critical importance was the establishment of temporary operating rules governing practice and procedure before the Division. On March 18, 1994, Chief Judge Kittrell appointed a Rules Committee to draft the temporary rules. The Committee was chaired by A. Camden Lewis, Esquire. The other members of the Committee were the Honorable Alison Renee Lee, Desa A. Ballard, Esquire, James G. Bogle, Jr., Esquire, Stanford E. Lacy, Esquire, James E. Flanagan, Professor of Law, Mark R. Elam, Esquire (Office of the Governor), Kelly Golden, Esquire, and Thomas M. Neal, III, Esquire. The Committee's Temporary Operating Procedures for the Administrative Law Judge Division were adopted on June 20, 1994.

SPECIAL PROJECTS OF THE DIVISION (CONTINUED)

Facilities.

Office space previously occupied by the Alcoholic Beverage Control Division was made available to the new Division. The offices, located in the Edgar A. Brown Building, would require substantial renovation in order to accommodate the six judges and staff, and three hearing rooms. The Construction and Planning Section of the Division of General Services, State Budget and Control Board, provided assistance with designing a workable floor plan and bidding the construction project, which was scheduled for completion in January, 1995.

Office Automation.

The Office of Information Technology Policy and Management, State Budget and Control Board, provided assistance in drafting a detailed plan for the purchase and installation of a small PC-based local area network which would be used for word processing, financial management, legal research, and case management.

Projects Anticipated for FY 1994-95.

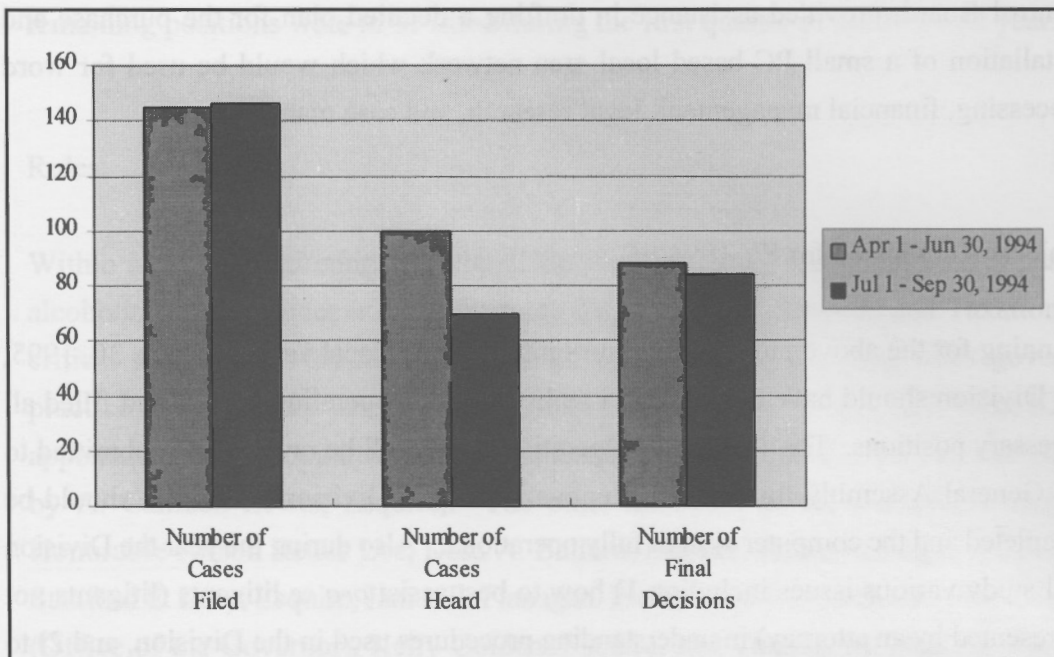
Planning for the above projects continues into the next fiscal year. By June 30, 1995, the Division should have established a realistic annual operating budget and filled all necessary positions. The Temporary Operating Rules will be revised and submitted to the General Assembly for review. Renovation of the Division's facilities should be completed and the computer system fully operational. Also during the year the Division will study various issues including 1) how to best assist *pro se* litigants (litigants not represented by an attorney) in understanding procedures used in the Division, and 2) to what extent the Division will be able to conduct hearings at locations outside of Columbia.

CASELOAD INFORMATION

Total Workload by Quarter.

Since the Division received case filings only during the final quarter of FY 1993-94, quarterly caseload totals are also provided, for comparison purposes, for the first quarter of FY 1994-95. The table and chart below compare for each quarter the number of cases filed with the Division, the number heard by an Administrative Law Judge, and the number of Final Decisions issued.

WORKLOAD BY QUARTER			
Quarter	Number of Cases Filed	Number of Cases Heard	Number of Final Decisions
Apr 1 - Jun 30, 1994	145	100	88
Jul 1 - Sep 30, 1994	146	70	84



CASELOAD INFORMATION (CONTINUED)

Filings by Case Type.

Filings during the fourth quarter of FY 1993-94 and the first quarter of FY 1994-95 were received from five agencies. The overwhelming majority of cases were of the type previously heard by the Alcoholic Beverage Control Commission and were ultimately transferred from the Department of Revenue and Taxation. The table and charts below compare for each quarter the number and type of cases filed by the five state agencies.

FILINGS BY CASE TYPE		
Agency / Type of Case	Apr 1-Jun 30, 1994	Jul 1-Sep 30, 1994
Department of Health and Environmental Control	13	35
<i>Health Care and Environmental Cases</i>	13	24
<i>OCRM Cases</i>	0	11
Department of Insurance	0	8
<i>Insurance Rate Cases</i>	0	8
<i>Insurance Agent Licensing</i>	0	0
Department of Labor, Licensing, and Regulation	4	17
<i>Wage Disputes</i>	1	11
<i>Appeals from Professional Licensing Boards</i>	3	6
Department of Natural Resources	0	0
<i>Hunting/Fishing License Revocations/Suspensions</i>	0	0
Department of Revenue and Taxation	124	85
<i>Alcoholic Beverage License Applications/Renewals</i>	72	64
<i>Alcoholic Beverage License Violations</i>	52	21
Department of Social Services	4	1
<i>Appeals of Day-care License Revocations</i>	4	1
Regulation Public Hearings	0	0
<i>Public Hearings for Proposed Regulations</i>	0	0
TOTAL FILINGS	145	146

BUDGET INFORMATION

Expense Item	FY 1993-94 Appropriation	FY 1994-95 Appropriation	FY 1995-96 Budget Request
Personal Services	\$56,316	\$724,764	\$1,028,726
Other Operating Expenses	\$15,000	\$223,581	\$354,477
Employee Benefits	\$11,263	\$159,476	\$257,182
Other Funds	\$0	\$198,574	\$0
TOTAL	\$82,579	\$1,306,395	\$1,640,385
<i>FTE's</i>	<i>3.00</i>	<i>24.00</i>	<i>24.00</i>

Appropriation for FY 1993-94.

Since the Division's first three judges did not begin employment until March 1, 1994, the agency budget for FY 1993-94 only included salary and fringe benefits for each judge for three months and a small amount for initial operating expenses. Filling other positions and incurring other expenses involved in setting up the new agency had to wait until additional funds were appropriated. Late in the fiscal year, \$197,545 was approved for the Division from the State's settlement of the Prudential Bache litigation.

Appropriation for FY 1994-95.

The Division's budget for FY 1994-95 is \$1,107,821 and includes 24 FTE's, although several were only partially funded, to begin later in the year. Also, funds for other operating expenses were approved (from estimates based on incomplete staff needs during most of the year). The \$197,545 from the Prudential Bache settlement and \$1,029 excess from the FY 1993-94 appropriation were carried forward and would be used to pay for renovating and furnishing the Division's offices, and for purchasing a computer system.

Budget Request for FY 1995-96.

The total budget request for FY 1995-96 is \$1,640,385. The increase over the previous year appropriation is intended to annualize salaries which were originally appropriated for only part of the year, and to fully establish an operating budget sufficient to support the Division for an entire fiscal year with a full contingent of judges and staff.

Total Number of Documents Printed	<u>255</u>
Cost Per Unit	\$ <u>.78</u>
Printing Cost - S.C. State Budget & Control Board (up to 255 copies)	\$ <u>198.24</u>
Printing Cost - Individual Agency (requesting over 255 copies and/or halftones)	\$ <u>—</u>
Total Printing Cost	\$ <u>198.24</u>